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Situation of human rights in Burundi

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the interim report of the independent expert on the situation of human rights in Burundi, Akich Okola.

* The present report was submitted after the deadline so as to reflect the most updated information.

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Interim report of the independent expert on the situation of human rights in Burundi

Summary

The present report follows the independent expert fifth mission to Burundi which took place from 29 May to 10 June 2006. The independent expert had undertaken a fourth mission to the country from 4 to 10 October 2005, after which he had prepared a report for the sixty-second session of the Commission on Human Rights (E/CN.4/2006/109).

During his previous visit, the independent expert had found an atmosphere of hope for a better future accompanied by high expectations for the Government. In spite of some improvements in the political process, he had also noted the deterioration of the human rights situation and deplored that the main perpetrators of human rights violations were government agents, and the victims, mostly civilians.

The independent expert had also expressed concern over the situation of political prisoners and encouraged the authorities to implement without further delay the provisions of the Arusha Peace Agreement, in particular regarding the establishment of the transitional justice mechanisms and an independent national human rights institution.

In view of the tremendous challenges to the reconstruction and development of Burundi, the independent expert had appealed to the international community to support the country and encouraged all actors in the field of human rights to pursue their efforts and strengthen their coordination with a view to achieving a better protection and promotion of human rights.

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I. Introduction

1. At its first session, held from 19 to 30 June 2006, the Human Rights Council decided to extend exceptionally, for one year, all the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights. Subsequently, the independent expert on the situation of human rights in Burundi who has been entrusted with this mandate by the Commission on Human Rights since 2004 was requested to submit a report to the General Assembly at its sixty-first session.

2. The present report covers the independent expert's fifth mission to Burundi which took place from 29 May to 10 June 2006. The report is based on this mission and covers the period from 1 January to 30 July 2006.

3. The independent expert wishes to thank all those whom he met for their contribution to the success of his mission. During his visit, the independent expert met the Vice-President of Burundi, the President of the National Assembly, the Minister of Justice, the Minister of Defence and the Minister of Good Governance, General Inspection of the State and Local Administration, Permanent Secretaries of the Ministers in charge of External Relations and International Cooperation, National Solidarity, Human Rights and Gender, as well as the Chief of Cabinet of the Director General of the national intelligence service. The independent expert also met the President of the Constitutional Court and former Chairman of the Commission of the Government on Political Prisoners, the Attorney General, the President of the Supreme Court, and the Executive Secretary of the National Commission in charge of Disarmament, Demobilization and Reintegration. The independent expert also had the opportunity to meet with the acting Special Representative of the Secretary-General of the United Nations, the representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Director of the Human Rights Division within the United Nations Operation in Burundi (ONUB), and members of the United Nations country team, including the representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the representative of the United Nations Children's Fund (UNICEF), as well as the representative of the European Union. He met representatives of the clergy and civil society organizations, and diplomats. The independent expert also met the leader of the main opposition party, the Front pour la democratie au Burundi (FRODEBU). He made follow-up visits to the prisons of Ortega and Mpimba in Bujumbura and a first visit to Rumonge prison.

4. The present report will address the general situation in Burundi with a special focus on (a) the rule of law and governance in Burundi; (b) the situation of political prisoners; and (c) the establishment of the transitional justice mechanism. The independent expert would also like to present to the General Assembly his conclusions and recommendations.

II. General situation

5. The independent expert's fifth mission to Burundi took place at a time of intensive activity which included the participation of the national, regional and international communities.

6. At the national level, the new government administration was taking roots after the new Constitution of February 2005, the presidential elections of 26 August

2005 and the *collines* elections of 23 September 2005. The new administration was proceeding with the appointment of new authorities within the territorial administration, the justice system and the foreign service.

7. At the end of April 2006, the President announced a 15 per cent salary increase for civil servants to be implemented at the end of July, and the provision of free health care in public facilities for expectant mothers and children under 5 years of age.

8. The reconstruction had not properly started, but the Government was finalizing its master plan for development. Meanwhile, a five-pronged emergency plan for 2006 has been submitted to the international community for funding.

9. The emergency plan focused mainly on (a) providing assistance to the populations affected by the drought and famine; (b) ensuring the rehabilitation, construction and equipment of schools; (c) improving access to basic health care; (d) ensuring the rehabilitation and reinsertion of returnees and internally displaced persons as well as former combatants; and (e) improving good governance and strengthening of the rule of law.

10. The Government was also in the process of finalizing its Poverty Reduction Strategy Paper with a special emphasis on peace and good governance, reconstruction and development.

11. The Parliament had approved a budget of $417 million for 2006, of which $341 million were expected to come from external resources. In February 2006, the Government expressed reservations with respect to the mandate of the 19-member Burundi Partners' Forum, which was subsequently revised.

12. Negotiations between the Government and the Forces nationales pour la libération (FNL) and its armed wing, the Parti national pour la libération du peuple hutu (Palipehutu), have begun under the facilitation of Charles Nqakula, South African Minister for Safety and Security, and received support from the Regional Peace Initiative and the international community. On 18 June 2006, the Government and FNL signed an Agreement on Principles towards Lasting Peace, Security and Stability, which outlines the basic principles agreed between the two sides.

13. By the end of July, the parties had not yet signed a ceasefire agreement. Therefore, despite some improvements, various factors continue to destabilize peace and threaten security. There were noticeable ongoing tensions between the Government and some opposition parties and human rights associations. Indeed, the major opposition party, FRODEBU, has officially withdrawn from the Government to protest against the lack of consultation and transparency on serious issues affecting the management of the country. The step taken by FRODEBU confirms a worrying trend of growing intolerance towards the views of the opposition. If this trend continues Burundi may well slide back into internal conflict.

14. With respect to security, the Government has lifted the curfew. On 29 April 2006, President Pierre Nkurunziza issued a decree creating a Technical Commission for Civilian Disarmament mandated to implement civilian disarmament. The presidential decree instructed all those illegally holding weapons to hand them over to the security forces within a two-month period. However the deadline passed and the disarmament campaign yielded no significant results. The Government has also

decreed that the Bujumbura Airport should operate full time as sign of improvement of the global security in the country.

15. During the reporting period, armed clashes continued between the national army and FNL mostly in Bujumbura rural, Bubanza and Cibitoke provinces. Contradictory reports were given about, on the one hand, an ongoing recruitment of combatants by the FNL Palipehutu and, on the other, the surrender of some FNL Palipehutu combatants in other areas of the country.

16. Meanwhile, many civilians living in the provinces where the confrontations were taken place have often been arrested, detained or harassed by both sides, either by government agents or FNL members.

17. Regarding the country's integration to the region, Burundi has been welcomed to the East African Community and the negotiations on the admission requirements were launched immediately after the Seventh Summit of Heads of State, held on 5 April 2005. The Council of Ministers' report on Burundi's application will be submitted to the next ordinary summit, scheduled for November 2006. Burundi has also improved its relations with neighbouring countries. In this regard, the Tripartite Plus Joint Commission consisting of Burundi, Rwanda, the Democratic Republic of the Congo and Uganda met in Bujumbura on 21 April 2006 and adopted a common position that could result in sanctions being imposed on leaders of illegal armed groups that continue to destabilize peace and security in the region.

18. Regarding the involvement of the United Nations in Burundi, the Security Council decided on 30 June 2006 by its resolution 1692 (2006) to extend the mandate of ONUB until 31 December 2006, and the Government of Burundi has welcomed the recommendation regarding the progressive phasing-out of ONUB and the establishment of a post-ONUB cooperation mechanism, which would focus on the implementation of transitional justice mechanisms, including a truth and reconciliation commission and a special tribunal (see S/2006/429 and Add.1). High-level delegations have visited the country to these ends and positive developments are taking place.

19. These issues are being discussed on a weekly basis between stakeholders, namely, the Human Rights Division of ONUB, OHCHR in Burundi, the United Nations Development Programme (UNDP), representatives of the Ministers of Defence, Justice and Human Rights, as well as various NGOs such as Human Rights Watch, Ligue Iteka, the Association for the Protection of the Human Rights of Prisoners and Detainees (APRODH). The Government seems sensitive to critics of its human rights performance and has agreed on a training programme with the Human Rights Division of ONUB with a view to improving its record.

20. Although, the situation in Burundi seemed to be progressively stabilizing following the series of elections which had been successfully staged in 2005, progress made towards the normalization of Burundi's political climate has been eroded by the rising intolerance of the Government towards the opposition. During his mission, the independent expert was able to confirm this trend, which is illustrated by the constant harassment by members of the security forces of political opponents and critics of the Government. Although the Government seems at times to be sensitive about its human rights image, it still faces tremendous challenges linked to persisting human rights violations and abuses, and to the culture of impunity. The Government also faces challenges in implementing its programme of

reconstruction and development in a context of widespread poverty and slow disbursement of the funds pledged by the international community at the donor's forum.

A. Governance

21. The Government has expressed its determination to fight corruption. In this regard, the former structure called General Inspection of Finance which was lodged in the Ministry in charge of good governance has been replaced by a more efficient department. Global anti-corruption actions include a draft law against corruption tabled in the Parliament. This bill provides for the establishment of an anti-corruption police force and a court.

22. However, during his mission, the independent expert was informed of allegations of corruption involving the leadership of the ruling party, and a case was pending in court. Corruption was also reported to be rampant within the administration at large and most of all in the judiciary.

23. The rising intolerance of the Government and ruling party towards their critics counts among the troubling trends noticeable during the reporting period. This intolerance to criticism in turn led to harassment and in some cases arrest of political opponents. Unless this trend is checked, the relationship between the Government and its opponents is likely to deteriorate, and there is a risk that further repression might ensue.

B. Transitional justice mechanisms

24. Discussions have been going on between the Government of Burundi and the United Nations for more than two years regarding the establishment of a truth and reconciliation commission and a special tribunal for Burundi. Whereas these mechanisms were expected to be put in place in September 2005, this deadline has not been met mainly because of the ambivalent attitude of the Government of Burundi towards the special tribunal.

25. During his visit to Burundi in March 2006, the independent expert discussed further with the Government and other stakeholders the key issues regarding the mechanisms. At that time, the Government had not yet reacted to the letter from the United Nations Legal Counsel with respect to the principles of non-immunity or amnesty for genocide, war crimes and crimes against humanity as well as the neutrality and independence of the judiciary.

26. The Government reaffirms that transitional justice mechanisms are necessary and reiterates its readiness to establish a truth and reconciliation commission, yet it has not made any concrete proposals for a tentative timeframe to do so. Moreover, the Government remains ambivalent as to the need for a special tribunal. A discussion with authorities leaves the impression that they would agree on establishing a truth and reconciliation commission, but would rather deal with the emergent truth by other means than a special tribunal. The view often expressed within government circles was that those who have been implicated in serious crimes should be dealt with by Burundians in their own way. The authorities are

facing a dilemma since they do not know what to do if the truth were to implicate important and well connected persons.

27. A unit composed of representatives of the Human Rights Division of ONUB and OHCHR in Burundi has been mandated to prepare the grounds for the establishment of the transitional justice mechanisms. This unit has already initiated a review of national laws to bring them in line with international standards and drafted an outreach strategy. In the light of the apparent ambivalence of the Government regarding the timely establishment of the transitional justice mechanisms, and in particular the special tribunal, it would be advisable that the international community should continue to press on the Government of Burundi the necessity to establish a truth and reconciliation commission and a special tribunal, and to agree on a time frame to do so.

C. Political prisoners

28. In his previous report, the independent expert had pointed out that action was being taken towards the release of political prisoners. The issue has now been more or less satisfactorily addressed and over 3,500 individuals benefited from a provisional release based on the recommendations of the Commission on Political Prisoners appointed by the Government on 15 November 2005 with the task of identifying political prisoners throughout the country.

29. Upon completing its work within the three-month deadline prescribed by the Government, the Commission advised the Minister of Justice to entrust the continuation of the work to a local NGO, APRODH. The former Chairman of the Commission on Political Prisoners had recognized that there remained about 100 prisoners who may qualify as "political" prisoners. APRODH has endeavoured to work on the files kept in the penitentiaries and is currently compiling information on concerned cases.

30. The independent expert met inmates in Gitega, Mpimba and Rumonge prisons who claimed to be political prisoners. They expressed their fear of having been forgotten by the system, since other inmates presenting similar cases have already been released.

31. Notwithstanding the progress made in this area, the release of political prisoners remains a controversial issue. Some organizations claim that the process was illegal insofar as it resulted in the release of perpetrators of serious crimes, including detainees who had been sentenced to death. They argued that the interests of the victims had not been taken into account. Some also claimed that the measure may hamper the work of the long-awaited transitional justice mechanisms.

32. The release of political prisoners also raises the issue of detainees who had committed minor offences and remained in custody, because they did not meet the criteria to be considered as political prisoners. In response to those various critics, the authorities have pointed out that the release was one of the provisions of the Arusha Peace Agreement and aimed at reconciling Burundians.

33. It was reported that the reintegration of former prisoners in their communities has been smooth. So far, no serious incidents have arisen in connection with the 3,500 individuals who were released under that scheme. Although it is foreseeable

that they might face problems in recovering their land, as it is likely to be the case for many Burundians who stayed away from their home for long.

III. Human rights situation

34. The human rights situation remains an area of great concern. Indeed, various human rights violations are reported on a daily basis due to the continuing confrontations between government forces and FNL rebel movement, the ongoing impunity, the massive presence of light weapons among civilians, the widespread poverty and the weakness of the culture of human rights in general.

35. The human rights situation is closely monitored by a number of actors, including OHCHR in Burundi and the Human Rights Division of ONUB, international and national NGOs such as Human Rights Watch, Ligue Iteka, APRODH, and representatives of key departments of the Government in charge of human rights, namely the Ministries of Justice, Human Rights and Defence, and the Army Chief of Staff. These actors meet on a weekly basis to discuss emergency cases.

36. There are reports of serious violations and abuse committed mostly by government forces, rebel groups and unidentified individuals, the majority of victims being civilians.

A. Major human rights violations and abuses

37. During the reporting period, the most violated rights are the right to life, the right to physical integrity, the right to freedom, safety and inviolability of the person, the right to freedom of opinion and expression and the right to property. The rights of children and women also need attention, as well as the plight of the Batwa minority, which has not yet been properly addressed.

1. Violations of the right to life

38. During the first half of 2006, human rights observers reported that 53 persons have been killed throughout the country. Of this total, 27 were killed by members of the Forces nationales de defense (FND), 5 by the Police nationale (PNB), 2 by the national intelligence service (Service national de Renseignement), and the remaining 19 presumably by FNL members or unidentified uniformed persons. The majority of the killings occurred in the provinces of Bujumbura, Bujumbura rural and Cibitoke.

39. Some of these cases concern summary executions of individuals suspected of being members or sympathizers of FNL. No one among the alleged perpetrators has been prosecuted, although the cases were brought before the competent authorities. In some instances, the authors were simply shifted to other military positions as were, for example, the soldiers who killed two civilians in Cibitoke and those who killed another individual in Giteranyi, Muyinga Province.

2. Violations of the right to physical integrity

40. The practice of torture is still reported to be widespread during police investigations in Burundi. Human rights observers reported 150 cases of torture and ill-treatment. Most of these cases took place in the provinces of Bujumbura, Bujumbura rural, Gitega, Kayanza, Makamba, Muyinga, Karuzi, Cibitoke, Bubanza and Kayanza. The authors of these violations are members of the government military forces, the national police forces, the national intelligence service, and, to a lesser extent, members of local administrations. Fifty-two of these violations were committed during the first half of 2006 and their number is increasing, especially towards individuals suspected to be FNL members. The perpetrators are rarely prosecuted because they benefit from complicity within the administration or exercise threats against the magistrates in charge of the prosecution. In two instances the authors of such violations have been charged. The two cases involved two policemen: one had tortured a woman accused of witchcraft and the other had raped a pregnant woman while she was in detention.

41. OHCHR in Burundi reinforced its awareness campaigns and education programmes against human rights violations in general, and torture, ill-treatment and other inhuman and degrading treatment, in particular. These actions include training sessions for members of the national army, the national police and the national intelligence service. Five sessions have been organized during the reporting period. Awareness actions are also organized around 26 June on the occasion of the International Day in Support of Victims of Torture which has been celebrated in Burundi since 1999. Besides, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is part of the training organized for law enforcement officials and other target groups, including women, civil society organizations, and other actors in the field of human rights.

42. During his visit, the independent expert was able to speak with a victim of torture, a young man, held prisoner at Mpimba Prison, who showed evidence of torture which he reported had been inflicted to him in Ngozi district. As a result his arms were paralysed. The perpetrator was a high-ranking army officer who has not been prosecuted. The young man also reported the case of a fellow inmate, allegedly suffering more serious injuries, who had mysteriously disappeared on his return from medical care in a clinic in Bujumbura.

43. Other violations of physical integrity reported to the independent expert covered beatings and wounding by FNL members. Eight cases were reported in Bujumbura rural. They concern individuals who were suspected by FNL members to be collaborating with the National Army.

3. Violations of the right to freedom, safety and inviolability of the person

44. Many violations have been reported regarding arbitrary arrest, detention in illegal places, and lengthy detention. The reports also mentioned specific cases concerning FNL members.

45. The Minister of Defence explained to the independent expert that soldiers often had difficulty in differentiating between rebel combatants and civilians on the battlefield. Nonetheless, the Minister declared that any soldier accused of human rights violations is prosecuted in accordance with the regulations. He added that the concerned individuals were handed over to the police because the army does not

have detention facilities. The Minister requested that OHCHR in Burundi continue training the military, the police and the gendarmerie and its staff in the field of human rights.

4. Alleged FNL detainees

46. Arrests in relation to suspected FNL membership have been steadily increasing in the provinces of Bujumbura, Bujumbura rural, Bubanza and Cibitoke, and to a lesser extent, in Kayanza, Ngozi and Karuzi. They are carried on by FND, PNB and SNR members, and concern men, women and even juveniles, some of whom have been released after interrogation. The trend of massive arrests observed in January and February evolved to more targeted arrests. During the reporting period, 112 cases of arrest and detention in military facilities have been reported. Other reports concern detention in illegal places. During the visit of the independent expert, the cases of 36 individuals detained by the special police in charge of road control (*Police spéciale de roulage*) were brought to his attention. The cases of 11 juveniles held in custody at Bujumbura Security Police facilities and 4 at Ngozi were reported to the independent expert. The independent expert was also told that, early in June, three schoolchildren from Bujumbura rural had been arrested two days before the national examinations for entry into secondary school, and held in a military camp in Bujumbura. At the time of the visit, it was also reported that 40 women were detained at the *cachots* of the Police de sécurité intérieure at Kigobe in Bujumbura, and that 16 of them were still in custody.

47. Early in April 2006, a new development occurred in the situation of FNL detainees. The Government opened a demobilization site known as a "welcome centre" for presumed FNL combatants at Randa, Bubanza Province, and encouraged FNL members to resign and voluntarily join the camp with the promise of good treatment. The opening of the site was expected to solve the detention problem of people held at military posts. In May, 363 individuals were detained at Randa, including 25 juveniles and 6 women, 9 of whom were reported to be former members of the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) whereas 37 of them were civilians who had returned from the Democratic Republic of the Congo. The detainees at this demobilization site could not be released without the authorization of the army although no charges had been brought against them.

48. On the whole, it appears that suspected members of FNL are at risk of torture and enforced disappearance. Such cases have been reported at Bubanza, in the military facilities located at Muzinda, and at Kabezi, Bujumbura rural, and in Bujumbura where a local leader was arrested by the police on his way home, taken to the Service national de renseignement and found dead the following day. According to the information obtained by the independent expert, the victim was tortured by such methods as having his genitals mutilated and his skull drilled with a sharp object. Although, the victim was in the custody of the intelligence service at the time of his death, no investigations have been made in order to charge those who were responsible for his death. It was also reported to the independent expert that some magistrates were instructed not to investigate the cases concerning suspected members of FNL handed to them by the police. Magistrates were instructed to simply confirm the arrest and commit the concerned individuals to prison.

5. Arbitrary and illegal arrests and detentions

49. Arbitrary arrests have been rising over the reporting period. They include cases of prolonged police custody, detention in illegal places and lengthy pre-trial detention. Human rights observers have reported cases of individuals detained for minor charges upon instruction from administrative authorities, mostly commune administrators. In the first half of 2006, 338 cases were reported throughout the country, and 474 in the second half. Such abuses by commune administrators were reported at Ndava, Mwaro Province, Buraza, Gitega Province, Ngozi, Ngozi Province, and Giteranyi and Gasorwe, Muyinga Province. State prosecutors tend to explain illegal and lengthy detention by the lack of staff and means of transportation to bring the detainees to legal detention facilities.

50. There was a strong feeling that the Government was using its legal system against political opponents and other critics of the administration, including members of the media and civil society organizations.

6. Violations of the right to freedom of opinion and expression

51. Five cases of violations of the right to freedom of opinion and expression occurred in the second half of 2006. The first case occurred on 15 April and concerns 30 journalists who were harassed by members of the national police forces and intelligence service while they were covering a press conference held by a Member of Parliament at his residence. The journalists were confined for several hours and forced to hand their recordings to the police before they could leave the compound. Many national and international organizations issued public statements to protest against this violation. Later the Government condemned the incident and the President of the Republic denounced the operation through his spokesperson.

52. The second case is that of a local human rights activist, member of Ligue Iteka, who was threatened by the Ngozi Regional Commissioner about an article in which he had reported the presence of spies from the Government of Rwanda among asylum-seekers at the camp in Ngozi Province. In spite of the reports, the regional commissioner did not acknowledge the threat and declared to observers that no harm would be done to the activist.

53. The third case involves the legal representative of the Cercle d'Initiative pour une Vision Commune (CIVIC) who was arrested on 10 May 2006 and held by the national intelligence service for five days before being transferred to Mpimba Central Prison on the instructions of the Prosecutor General of the Republic. The independent expert met the legal representative of CIVIC at Mpimba Central Prison. He had been charged with being a threat to State security after holding a press conference and writing a letter to President Nkurunziza in which he had speculated on the possible reasons why the Government had delayed the start of negotiations with FNL, and ventured to say that Burundi, Rwanda and Uganda might be planning to launch an attack on the Democratic Republic of the Congo.

54. The independent expert took up the matter with the Chief of Cabinet at the national intelligence service, the Prosecutor General and the Minister of Justice. The Chief of Cabinet maintained that whoever threatened State security would be arrested, as was the case with the CIVIC legal representative. The Prosecutor General confirmed that the detainee was a threat to State security, and added that many other charges were brought against him. The Minister of Justice explained that

in such a case she had to take into consideration public order and security as well as freedom of expression. She was positive that the case had nothing to do with arbitrary arrest.

55. The arrest and detention of the CIVIC legal representative drew sharp condemnation from many stakeholders in Burundi, including members of civil society, politicians from the opposition and the international community, all of whom saw this case as a retrogressive step from a Government which had promised during the electoral process to uphold human rights, and freedom of opinion and expression. The date for trial had not been fixed at the time of the visit.

56. The fourth case concerns a reporter from the Agence burundaise de Presse who had been arrested on 31 May 2006 in Kayanza and accused of rebellion by the Prosecutor of the Republic in this province. He was transferred to Ngozi Central Prison on the same day. On 16 June, the County Court confirmed the detention and the appeal against this confirmation was rejected. The independent expert was informed that the detainee's health was bad and that his prosecution may take time.

57. The last case concerns members of AC genocide, a local association of activists against genocide. Three members have been accused of holding an illegal meeting, an accusation they challenged since they hold a permanent licence to hold meetings in any area of the country on the 21st of each month. They were released after 10 days of detention. Their case is indicative of an attempt by the State to stifle freedom of expression because, according to their account, they were arrested before they could deliver the speech they had intended.

7. Violations of the right to freedom of movement and freedom to choose one's residence

58. Four main issues regarding these rights were raised during the visit of the independent expert, namely the cases of Rwandan asylum-seekers, refugees from the Democratic Republic of the Congo, the follow-up on the Gatumba massacre and the situation of repatriation.

59. Regarding the Rwandan asylum-seekers who are in Ngozi Province, the representative of UNHCR informed the independent expert that the Government of Burundi had established a Commission on Eligibility to Asylum which includes experts from UNHCR. The identification of those who would be eligible for asylum (out of 19,000 asylum-seekers) was under way and the Government of Rwanda showed a more positive attitude insofar as it was no longer carrying out propaganda among the asylum-seekers.

60. The Government of Rwanda had also initiated awareness campaigns which had already resulted in the return of some 2,000 Rwandan asylum-seekers even before their claims were processed. The monitoring of the situation of these Rwandan refugees went on along with the identification of eligible asylum-seekers.

61. Regarding the cases of refugees from the Democratic Republic of the Congo, mentioned in the previous report of the independent expert (A/60/354), 2,600 refugees are still living on the sites at Mwaro and Gasorwe and showed no intention of going back before the elections were completed in their country of origin.

62. With regards to the Gatumba massacre in August 2004, the representative of UNHCR informed the independent expert that there had been no new development

since 2005 (see A/60/354, para. 30). The promises of the former Government of Burundi and the Government of the Democratic Republic of the Congo to take action have not been fulfilled. There appears to be no determination on the part of the Government of Burundi to deal with this matter in a conclusive way, nor is there any discernible evidence that the international community is interested in its resolution.

63. The independent expert once again met the only person accused in connection with this massacre at Mpimba prison. Notwithstanding the fact that he was arrested over one year ago, he has not yet been tried for the offence.

64. With respect to the repatriation of Burundi refugees in the United Republic of Tanzania, the representative of UNHCR explained that the process had slowed down mainly due to reports of human rights violations and abuses in Burundi and the unresolved issue of land. The Government of Burundi is no longer promoting return, nor is UNHCR facilitating it. Only the Government of the United Republic of Tanzania seemed to be pushing the refugees to return to Burundi.

65. The representative of UNHCR pointed out the case of the returnees from the Democratic Republic of the Congo who have become internally displaced persons in Rukaramu because of the lack of preparation prior to their return. The Government of Burundi had asked UNHCR to build temporary homes for those returnees.

8. Violence and abuses attributed to FNL and unidentified armed groups

66. Besides the violations of the right to life and the security and integrity of the person (see paras. 38-44 above), FNL members and other unidentified uniformed or non-uniformed groups are committing abuses against civilians. These abuses include looting and plundering, abduction, enforced conscription and extortion of money.

67. Twenty-five cases of looting were reported in the first half of 2006, and 46 in the second half, in the provinces of Bujumbura rural, Cibitoke, Bubanza and Kayanza. FNL combatants loot to obtain food and other items such as medicines. Other armed groups wearing National Defence Forces or National Police uniforms do loot also.

68. Abduction and enforced conscription have been reported in the above-mentioned provinces. Eleven such cases were reported in the first half of the year and 27 in the second half. Conscription had a tendency to rise as soon as the negotiations started, as FNL promised their new members that they would be demobilized and given money upon the signing of a ceasefire agreement.

69. Extortion of money takes the form of subscription that FNL exacts on inhabitants of areas where the movement operates. Those who refuse to pay are threatened with death, and sometimes the local authorities are instructed to carry out the collection by force.

9. Rights of women and sexual violence

70. Burundi has taken major steps regarding the advancement of the rights of women. As a result, one third of the ministerial positions and seats in both the National Assembly and the Senate are occupied by women. The law on inheritance for women had been reviewed by a ministerial council and a revised version should be promulgated soon.

71. A law on violence against women and rape was due to be enacted soon. The Minister in charge of human rights and gender issues told the independent expert that the Ministry will pay particular attention to issues regarding women through the department of legal assistance which was soon to be established and would be responsible for all human rights. Furthermore, OHCHR in Burundi was helping with the drafting of a law whereby sexual violence and other issues related to women's rights will be properly addressed.

72. The Ministry also explained that their current actions included a large awareness campaign against sexual violence targeting the judiciary and locally elected representatives of the population with a view to repressing sexual violence within the framework of the law rather than through negotiations between the author's and the victim's families, as was commonly the case.

73. These advances notwithstanding, sexual violence has risen tremendously in almost all the provinces of Burundi, including Bujumbura. The perpetrators are mainly army and police officers, individuals, and sometimes, even family members.

74. A total of 137 cases were reported to human rights observers from January to March 2006 and 158 from April to June 2006. It is suspected that many more cases were not reported for fear of stigmatization or reprisals.

75. Some health centres offer assistance to the victims, but the majority of the victims are left to fend for themselves. Worse, Burundi law is still clumsy about repressing sexual violence, and very few victims take their cases to court.

76. During his visit, the independent expert was informed of the case of a 14-year-old schoolgirl who was forcibly married off to an old man. A local NGO challenged the "marriage", which resulted in harassment of the human rights defenders by State security services, simply because the bridegroom to be was well connected. The girl suffered trauma from this experience and has been unable to return to school.

10. Rights of children

77. As it was pointed out in the previous report (E/CN.4/2006/109, paras. 55-58), children's rights need specific attention, owing to the particularly difficult conditions in Burundi as a poor country emerging from war with a high rate of HIV prevalence. Specific groups of children need to be followed up, including child soldiers and street children.

78. With regard to child soldiers, UNICEF reported that 3,050 former soldiers had been reinserted, with 18-month support in kind to their families. WFP was supplying them with food and 2,300 of them were participating in vocational training or had gone back to school. The programme had been implemented smoothly and the actors were awaiting the children who would be demobilized after the signature of the ceasefire agreement with FNL.

79. With respect to street children, the phenomenon is on the rise in Bujumbura. A programme aimed at curbing the trend was elaborated in 2005 and included aspects related to prevention, assistance and reintegration.

80. Burundi is one of the countries which are expected to report, in November 2006, on child rights within the context of the implementation of Security Council resolution 1612 (2005) which establishes a monitoring and reporting mechanism on children and armed conflicts. The Poverty Reduction Strategy Paper is under review

and a child protection network has been established to ensure that the rights of the child receive due attention.

81. Another category of children deserve specific attention: children in conflict with the law. So far, the issue has been correctly dealt with, but the efforts need to be sustained.

82. Besides, more and more children are victims of sexual violence and other human rights violations, including the enforced recruitment by FNL mentioned above.

11. The rights of the Batwa community

83. The plight of the Batwa has not changed since the previous report (see E/CN.4/2006/109, paras. 59 and 60), except that their representatives are becoming more aware of their rights and issue more petitions about them. The problem arising from the fact that the Batwa do not own land, which is the basic condition for the enjoyment of other rights in Burundi, has not been solved.

84. The independent expert spoke to Batwa representatives and they still complained of marginalization. Although they are now represented in the National Assembly and the Senate, their voices carry no weight in the decision-making process as they are not represented in administrations. Furthermore they are not consulted about key measures taken by the authorities.

85. The Batwa representative whom the independent expert met also reported that many members of the Batwa communities were in prison, most often charged with minor offences, but had no advocate to speak for them.

B. Administration of justice

86. As was mentioned in the previous report, the administration of justice needed to be reformed in accordance with the provisions of the Arusha Peace Agreement. These reforms are very slow, one of the most significant cases in point being the delay in the establishment of the transitional justice mechanisms.

87. New developments in this area include, besides the release of political prisoners, the appointment of senior magistrates and judicial officials, and the integration of a justice sector component in the Poverty Reduction Strategy Paper.

88. The Legal Assistance Programme which was previously implemented by OHCHR in Burundi was terminated by the end of 2005, but the majority of its potential beneficiaries were released under the Government's measure for the release of political prisoners.

89. Human rights observers continued monitoring prison conditions, and the independent expert visited the prisons of Gitega, Mpimba and Rumonge. On the whole, the prison conditions remain wanting. In spite of the release of political prisoners, most of the facilities are still overpopulated. For example, at Gitega there are 806 inmates against a capacity of 400; at Mpimba, 1,886 against a capacity of 800; and at Rutana, 286 against a capacity of 200.

90. Other shortcomings were pointed out with regard to the identification of charges brought against the detainees, the understanding of knowledge of applicable

laws, namely the Criminal Law and the Criminal Proceedings Law, lengthy pre-trial detention, and interference by the administration.

91. The facilities are often old buildings, with poor sanitation and insufficient logistic equipment. Juveniles are mixed with adult men and women at least in daytime. The independent expert encountered instances where babies were born in prison in Bujumbura and Rumonge.

92. Complaints of corruption were reported, and recommendations for provisional release are not usually acted upon. On the whole the justice system remains weak.

93. Among the rest of the population, there are signs of mistrust in the justice system, as for example mob justice whereby people suspected of crimes are beaten up, sometimes to death. Such cases were reported in Ngozi, Kirundo, Gitega, Mwaro, Ruyigi, Cankuzo, Muyinga, Karuzi and Makamba. During incidents in those areas, 18 people were killed, 4 wounded, and 6 others kept in police custody for their security.

C. Economic, social and cultural rights

94. On the eve of the New Year, the President announced some measures aimed at alleviating poverty and hunger, namely the decrease of the costs of essential food items.

95. It should be recalled that a measure granting free primary education had been adopted in September 2005. In the previous report, it was pointed out that the measure received the support of many actors including UNICEF and other donors. During his mission, the independent expert was informed that, as a result, the school population had increased from 200,000 to 550,000 children. Other actors including churches have provided school rooms, school material and teacher training.

96. However, it was also reported that some 150,000 children were turned away from school for lack of facilities. Other children are still in need of school material, and this is mostly the case of the Batwa children who can hardly afford school uniforms and books.

97. Another measure of free health care for expectant mothers and children under five years was announced by the Government at the end of April 2006. The measure was welcomed by the public. By the time of the visit, it was reported to the independent expert that public health facilities were overwhelmed and some facilities lacked medicines.

98. A 15-per-cent salary increase for civil servants starting from July 2006 was also announced, which should alleviate poverty. Meanwhile five provinces in the northern and the north-eastern parts of Burundi were stricken by the drought and severe famine, which, the independent expert was told, were driving children out of school and families to exile in the United Republic of Tanzania. The Government had called on national solidarity and asked all citizens of other areas to contribute towards the purchase of food for the hunger stricken areas.

99. Another issue concerns land, which remains a cause of rising conflict. A commission was about to be established to deal with issues of land disputes, but it was not supposed to hold a judicial mandate. Land rights are still a tremendous challenge, which is reportedly leading to many human rights violations, including

murder and misappropriation. There were also complaints of interference by administrative authorities in this area. This sensitive issue should be addressed in a holistic way, taking into account the population growth, economic development and the regional dimensions.

100. As stressed before, Burundi is elaborating a master plan for development. Meanwhile, the Government has submitted emergency and sectorial programmes for funding. Burundi has benefited from debt relief, but reconstruction is starting at a very slow pace. The funds pledged by the international community have not yet been disbursed and most of the assistance is used for humanitarian needs.

101. All the donors contacted by the independent expert in Bujumbura reaffirmed the willingness and readiness of their countries and organizations to help Burundi in its reconstruction.

D. Promotion and protection of human rights

102. In this context, the Human Rights Division of ONUB and OHCHR in Burundi reinforced their human rights promotion and protection activities.

103. Awareness campaigns in the field of human rights, backed by appropriate material, have continued countrywide with a special emphasis on issues of concern such as sexual violence, torture, and the rights of the Batwa, the rights of women and children, and the administration of justice. The targets are the schools, the local authorities and the general public.

104. Training sessions have been organized for national army and police forces, including agents of the national intelligence service. Law enforcement officials also received training in matters related to their everyday work.

105. Other training sessions on the drafting of initial and periodic reports on international instruments ratified by Burundi were provided to targeted government officials.

106. Another important activity is connected with the establishment of an independent national human rights institution. The Government has expressed its willingness to appoint a national commission for human rights, and OHCHR in Burundi has organized training sessions for civil society organizations and civil servants to this end.

107. Along with the continuation of human rights monitoring on the field, including prisons and detention places, two networks were established. The first encompasses 137 national human rights observers who were trained in all the provinces of Burundi over the last two years with the support of the European Union. The network was formally set up on 13 March 2006. On 26 April, another network of 296 women leaders of grass-roots communities was established, after a three-year training divided into four sessions. The two networks are collaborating with human rights monitors on the field, but their structures are yet to be strengthened.

108. The human rights segment of ONUB and OHCHR in Burundi are also reinforcing the human rights-based approach through training and integrating human rights principles into inter-agency mechanisms like the consolidated appeal process. They were also instrumental in the integration of human rights in the Government's Poverty Reduction Strategy Paper.

109. In preparing for the establishment for the transitional justice mechanisms, OHCHR in Burundi is reviewing domestic laws with a view to bringing them in line with international standards.

110. In a nutshell, there remain tremendous challenges for the realization of a culture of human rights, although, the Government of Burundi, and other actors are consolidating their efforts to contribute to the decrease of human rights violations.

IV. Conclusions and recommendations

111. **The independent expert urges the Government and FNL to negotiate in earnest in order to ensure that peace is achieved in Burundi.**

112. **The independent expert urges the Government of Burundi to speed up the process of establishing the transitional justice mechanisms and to fulfil its international commitment in this regard.**

113. **The independent expert reiterates his concern regarding the Gatumba massacre and urges the Government of Burundi to conclude the investigation on this matter and to ensure that the perpetrators are brought to justice.**

114. **The independent expert urges the authorities of Burundi to take measures to deal with increasing incidents of sexual violence.**

115. **The independent expert urges the Government of Burundi to consolidate the young democracy which the country embraced in 2005 by showing tolerance towards its critics.**

116. **The international expert commends the Government of Burundi for providing free medical assistance to expectant mothers and children under 5 years of age and urges it to expand the programme to all the poor within a reasonable time.**

To the international community

117. **The independent expert encourages the international community to increase its support to the justice system in Burundi, in particular regarding the establishment of the transitional justice mechanisms.**

118. **The independent expert commends and supports the efforts of the United Nations in Burundi, in particular the Office of the United Nations High Commissioner for Human Rights in Burundi and the United Nations Operation in Burundi, the international community as well as civil society to ensure better protection and promotion of human rights and encourages them to strengthen their cooperation, particularly with regard to the establishment of the transitional justice mechanisms and the National Human Rights Commission.**

119. **The independent expert commends the international community, particularly the Regional Peace Initiative on Burundi, the Security Council, the African Union and the Special Representative of the Secretary-General, for their efforts in assisting Burundi to attain and consolidate peace.**

120. **The independent expert calls on international donors to increase their efforts regarding humanitarian and development assistance and to do all they can to fulfil rapidly the commitments they assumed at the Paris, Geneva and**

Brussels conferences, especially those concerning the campaign against HIV/AIDS, priority development programmes and human rights.

121. **The independent expert urges the international community to press on the Government of Burundi to complete the investigation regarding the Gatumba massacre and to prosecute the perpetrators of the massacre.**

122. **The independent expert appeals to the international community to urge the Government of Burundi to desist from taking measures which may destabilize the country.**